

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

77-1037

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

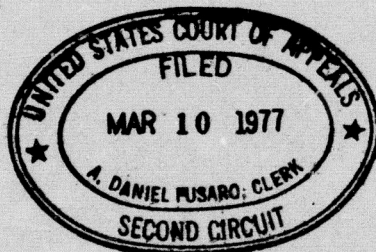
-against-

HARRY HASLAM,

Defendant-Appellant,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

BRIEF OF DEFENDANT-APPELLANT



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UNITED STATES COURT OF APPEAL
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee,

Docket No.

-against-

77-1037

HARRY HASLAM,

Defendant-Appellant.

BRIEF OF DEFENDANTS-APPELLANTS

ISSUES PRESENTED

1. Was the court below correct in holding that oral admissions made by defendant would not be suppressed despite defendant's contention that his physical condition was such that he was incapable of exercising free volition and making a rational choice to waive his right to remain silent?

STATEMENT OF CASE

On March 10, 1976, a Federal Grand Jury empaneled in Albany, New York, returned a two count Indictment, number 76-CR-27, against defendants Peter Ferraro, Harry Haslam, and Frank Barnes, charging them with violations of Title 18, United States Code, Sections 2115 and 641.

On March 15, 1976, the defendants appeared in United States District Court in Albany, New York, and entered pleas of not guilty to the charges. Thereafter, Peter Ferraro and Frank Barnes appeared before United States District Judge James T. Foley and entered pleas of guilty to Count I of the Indictment.

On June 29, 1976, defendant Haslam's attorney, Terence L. Kindlon, Esq., filed a motion in this Court for the suppression of incriminating statements made by the defendant and any and all evidence derived from those statements.

On October 6, 1976, an evidentiary hearing was held. The Honorable Lloyd F. MacMahon, U.S. District Judge, sitting by designation, denied defendant's motion to suppress.

Subsequent to the denial of his motion the defendant, Haslam, entered a plea of guilty to the first count of the indictment. The defendant was allowed to reserve his appeal on the suppression motion

pursuant to a court-approved stipulation under the authority of U.S. v. Burke, 517 F. 2d 377 (2d Cir. 1975). On December, 9, 1976, the defendant was sentenced to a three year period of incarceration.

FACTS

On February 21, 1976, at approximately 8:55 p.m., Peter Terry, Correctional Officer, Great Meadow Correctional Facility, Comstock, New York, while making his rounds of the Comstock area, stopped in front of the United States Post Office at Homer Avenue, Comstock, New York. He observed a truck parked at the rear door of the post office and noted that the truck's motor was running. Parking his car in front of the truck, Mr. Terry observed an unknown number of persons moving about. He saw a white male jump from the rear of the truck and run into a wooded area behind the post office, and heard the movement of other persons running into the woods. Mr. Terry walked to the rear of the truck and observed a safe hanging from a block attached to the rear of the truck. Mr. Terry then notified the New York State Police who responded at approximately 9:10 p.m.

State Police Officers Askew, Pasquette, and Parsons arrived at the scene and conducted a search of the immediate area. Observing footprints in the snow behind the post office, Officer Parsons followed

the prints some distance to a railroad track bed, where he observed a person lying along the railroad tracks. After initially identifying himself as John Russo, the person identified himself as Peter Ferraro from Kingston, New York.

At approximately 8:00 a. m. , on February 22, 1976, Investigator John DiNio, responding to a call from the Captain of the New York Central Railroad Police, arrested Frank Barnes of Kingston, New York, after Barnes had attempted to board a railroad car at the Whitehall yards. Prior to Barnes' arrest, it was determined that the truck found at the post office was registered to Frank W. Barnes, Kingston, New York.

At about the same time that Mr. Barnes was apprehended, the New York State Police, Whitehall, New York, received a telephone call from Richard Foran, 9 Ann Street, Fort Ann, New York, which is located approximately five miles south of Comstock, New York. Mr. Foran advised that a man had come to his front door and requested that he be allowed to make a telephone call because his car had broken down. Mr. Foran observed that the man's clothing was soaked and stated that the man appeared to be cold and shivering.

Inspector Joseph Louis, New York State Police, South Glens Falls, New York, responded to Mr. Foran's telephone call and observed a person standing on the front porch of Mr. Foran's house at 9 Ann Street.

Mr. Louis identified himself as a New York State Trooper and asked the individual where he lived. The person responded "here". Mr. Louis told him that he did not live there and asked him what his name was. The person identified himself as Vinnie Schoonmaker, from Kingston, New York, and stated that he had become separated from his friends. Louis noticed that the person appeared to be exhausted and was inadequately clothed, soaking wet and cold; he further observed that the individual was unable to remove his hands from his pockets. Having previously learned that Ferraro and Barnes were from Kingston, New York, Mr. Louis suspected that the individual on the front porch may have been one of the persons involved in the post office burglary. At that time, he patted him down and advised him of his constitutional rights. He advised him of his right to remain silent and told him that anything that he said could be used against him in a Court of Law. The individual was advised that he was entitled to an attorney and that if he could not afford one, he could be assigned an attorney. There was a substantial question of fact concerning Officer Lewis' demeanor at this juncture. Defendant Haslam states that the officer approached with his service revolver drawn, pointed at defendant and spoke in a very harsh and intimidating manner. The officer contended that he approached slowly and spoke softly.

Mr. Louis then asked him if he understood his rights and the person stated that he did. Conversation between the two followed during which the individual made certain inculpatory statements. He was taken into custody, placed in the police car which and, while motoring to the state police substation at Whitehall, New York, made further inculpatory statements. During the course of the conversation the individual in custody identified himself as Harry Haslam.

Prior to the arrests of the defendants, police officers found in Barnes' truck a postal money order imprint machine belonging to the Comstock Post Office. Heler Kipp, Postmaster, Comstock Post Office provided an inventory of the contents of the safe which disclosed that the safe contained \$100.00 in cash, \$1,857.46 in stamp stock, a money order validating plate, and 156 blank United States Postal Service money orders each having a potential maximum value of \$300.00. Additional investigation showed that entry into the post office was made by breaking a window on the west side of the building.

ARGUMENT

POINT I: THE COURT BELOW SHOULD HAVE SUPPRESSED THE ORAL ADMISSION MADE BY DEFENDANT BECAUSE HIS PHYSICAL CONDITION WAS SUCH THAT HE WAS INCAPABLE OF EXERCISING FREE VOLITION AND MAKING RATIONAL CHOICES IN WAIVING HIS RIGHT TO REMAIN SILENT.

The Court below, in denying defendant Haslam's motion to suppress a series of inculpatory statements given prior and subsequent to his being placed in custody, held, after an evidentiary hearing, that Officer Lewis of the New York State Police had essentially satisfied the formulaic requirements set forth by Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966) (A-69). Defendant Haslam does not challenge those findings but respectfully submits that his statements should have been excluded from evidence for the more fundamental reason that, because of his physical, mental and emotional condition at the time those statements were made, he was utterly incapable of knowingly and intelligently waiving his right to remain silent and equally incapable of giving a voluntary statement.

Uncontroverted evidence adduced at the suppression hearing demonstrated that defendant Haslam was a heroin addict (A-54), that he was a patient in a methadone maintenance program (A-54), that he required a prescribed dosage of methadone each day (A-54), that it was normally

dispensed in a single day dosage units (A-54), that he had neglected to pick up his Saturday and Sunday dosages (A-55), that he had been undergoing withdrawal symptoms for some hours prior to making the first inculpatory statement sought hereby to be suppressed and that those symptoms were physically debilitating (A-56). There was further uncontroverted proof that defendant Haslam was alone, outdoors in freezing temperatures, without shelter or proper winter clothing (A-51); that he remained outdoors for a period of approximately 12 - 14 hours (A-53); that during that period it rained and/or snowed almost continuously; that after wandering in the woods for some hours defendant Haslam found his way to a barge canal and walked along its imperfectly frozen surface a distance of approximately 4 to 5 miles (A-53, 54); that when he arrived at the Foran home in the Village of Fort Ann at approximately 8:00 a.m., February 22, 1976, he was suffering the adverse effects of exposure, and that he appeared "tired" and "cold" to arresting Officer Lewis (A-47, 48). The uncontroverted evidence clearly establishes that defendant Haslam was suffering greatly from his long, solitary exposure to the elements. Expert testimony corroborates and substantiates defendant Haslam's contention that he was suffering the ill effects of drug withdrawal (A-72). Defendant Haslam contends that Officer Lewis approached him with his service revolver drawn, pointed in his direction (A-57); that the trooper's demeanor was extremely harsh and that he was grabbed and

physically restrained by the officer (A-56). He was thereupon handcuffed taken into custody and placed in a police vehicle. Defendant Haslam further contends that during the entire ride from Fort Ann to the White-hall substation his hands were cuffed behind his back, requiring him to sit in an awkward position (A-57).

It is respectfully submitted that the combined effect of drug withdrawal symptoms and exposure together with Trooper Lewis' demeanor were such that defendant Haslam's decision to give statements was not the product of a rational intellect and free will and, accordingly, those statements should have been held inadmissible.

In order to be admissible into evidence a defendant's statement must be the product of his "rational intellect" and "free will". Blackburn v. Alabama, 361 U.S. 199, 208, 80 S.Ct. 274, 4 L.Ed. 2d 242 (1960); Lynum v. Illinois, 372 U.S. 528, 534, 83 S.Ct. 917, 9 L.Ed. 2d 922 (1963); Townsend v. Sain, 372 U.S. 293, 307, 83 S.Ct. 745, 9 L.Ed. 2d 776 (1963); Culombe v. Connecticut, 367 U.S. 568, 81 S.Ct. 1860, 6 L.Ed. 2d 1037 (1961).

Safeguards were prescribed by the U.S. Supreme Court in Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966). Miranda specifically requires that in order to be valid, the waiver must be the result of a "knowing" decision. This admonition requires that the accused make the waiver with complete knowledge, awareness and cognition of what he

is doing at the moment of decision. Moreover, he must be in a proper physical and emotional condition to exercise a knowledgeable choice among the alternatives available to him.

That the formulaic recitation of "Miranda warnings" may not, under certain circumstances, be enough to satisfy this constitutional standard of voluntariness was recognized by this court in United States Ex Rel. Cronan v. Mancusi, 444 F 2d 51 (2d Cir. 1971).

"A person's will may be sufficiently impaired because of his physical condition so as to render any statement he may make to police or other authorities involuntary or other than the product of a free will and rational intelligence, despite the scrupulous conduct of the questioners." Cronan at p. 52 (2d Cir. 1975).

In Cronan the court, while recognizing the problem, rejected the petitioner's request for relief on the ground the facts failed to give rise to a presumption that he was incapable of exercising free volition or making rational choices or otherwise rendering the defendant incapable of exercising reason.

In the instant case, it is submitted, circumstances are such that a presumption necessarily arises that defendant Haslam's cognitive process was completely insensitized and he had lost awareness of what he was doing and what the result of his decision to speak would be.

In sum, as a consequence of defendant Haslam's physical disability, from the combined effect of exposure, drug withdrawal and fear, he was incapable of making a knowing decision and his statements and confessions should not have been held admissible into evidence.

CONCLUSION

For the reasons stated above, the ruling of the District Court should be revised, and the statements of the defendant suppressed.

Respectfully submitted,

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